

OGC Has Reviewed

Approved For Release 2001/09/01 : CIA-RDP81-00142R000400070003-1

DDA
File *Pers-2*

STATINTL

Three-Year Leave Without Pay Policy

John F. Blake
Deputy Director for Administration

DD/A 78-1825/2

7 June 1978

Deputy Director of
Central Intelligence

Frank:

In view of the interest in this Three-Year Leave Without Pay Policy and its discussion at a recent EAG meeting, I feel it appropriate that you sign the attached notice.

Deputy Director for
Administration

/s/ Jack

John F. Blake
Deputy Director
for
Administration

Chief, RCB

Att: [REDACTED]

DD/A Registry
78-1825

STATINTL

Distribution:

- Orig - DDCI w/att for Signature
- 1 - ER w/att
- 1 - DDA Chrono
- ✓ 1 - DDA Subject
- 1 - JFB Chrono
- 1 - RFZ Chrono

Originator: [REDACTED]

EO/DDA;se/7 June 78

STATINTL

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This Notice Expires 1 July 1979

PERSONNEL

STATINTL

8 June 1978

THREE-YEAR LEAVE WITHOUT PAY POLICY

1. The Agency has now had approximately five years experience with the policy of granting three-years leave without pay (LWOP) to employees accompanying employee spouses to assignments outside the Headquarters area. While the initial intent was to limit this benefit to a one-time grant, the policy has recently been reviewed by the Executive Advisory Group and recommended new guidelines have been approved by the Deputy Director of Central Intelligence.

2. It is Agency policy to assign employee couples to the same field location whenever possible. Operating components make every effort within good personnel management practices and the availability of appropriate positions, to accommodate the desires of these employees and to this end will give particular consideration for long-range planning for their assignments.

3. When dual assignments are not possible, one of the employees may request LWOP to accompany the employee spouse to an assignment outside the Headquarters area. The following guidelines will be followed in processing such requests:

a. A grant of three-years LWOP may be approved for employees who have either completed the former one-year trial period or two years of the new three-year trial period of employment.

b. A three-year LWOP grant may be extended when the tour of the assigned employee is extended for the convenience of the Government. The grant may also be extended to allow for a reasonable period of time after completion of the tour prior to return to duty, but not to exceed 60 days.

c. Subsequent grants of three-years LWOP may be approved provided they are interspersed with assignments as staff employees of at least three-years duration.

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STATINTL

June 1978

PERSONNEL

d. Individuals who break the three-year LWOP with staff or contract employment may return to the LWOP status for the period of time remaining in the original grant if the assignment for which it was originally approved has not been completed. LWOP in the three-year grant unused during one tour assignment is not applicable to a subsequent tour.

4. This grant of three-years leave without pay does not guarantee reinstatement to staff status at the former grade and responsibilities upon return to Headquarters. Individuals in this status, however, are given first consideration by the parent organization for any vacant position for which qualified. Former employees, not approved for the three-year grant of LWOP, who wish to return to staff employment with the Agency are given next priority consideration for reappointment when suitable positions become available. Operating officials who are unable to provide a suitable position for the returning employee spouse within their components will be assisted by the Career Service and the Office of Personnel in their placement efforts.

/s/ Frank C. Carlucci

Frank C. Carlucci
Deputy Director of Central Intelligence

Dist: Orig - DDCI Signature (Return DDA)
1 - ER
1 - DDA Chrono

Originator: F.W.M. Janney/Director of
Personnel;se/7 June 1978

DISTRIBUTION: ALL EMPLOYEES

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Approved For Release 2001/09/01 : CIA-RDP81-00142R000400070003-1

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Three-Year Leave Without Pay Policy

| | | | | | |
|---|--|-----------|-----------|--------------------|---|
| FROM: | F. W. M. Janney Director of Personnel 5E 58 Hqs. | EXTENSION | 6825 | NO. | |
| | | | | DATE | 2 JUN 1978 |
| TO: (Officer designation, room number, and building) | DATE | RECEIVED | FORWARDED | OFFICER'S INITIALS | COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.) |
| 1. Executive Officer to the DDA 7D 18 Hqs. | 6/5 | | | 36 | |
| 2. | | | | | |
| 3. Associate Deputy Director for Administration 7D 18 Hqs. | 6 JUN 1978 | | | 4 | |
| 4. | | | | | |
| 5. Deputy Director for Administration 7D 18 Hqs. | 6 JUN 1978 | | | 3 | |
| 6. | | | | | |
| 7. Director of Personnel 5E 58 Hqs. | 6/7 | | | 3 | |
| 8. | | | | | |
| 9. | | | | | |
| 10. | | | | | |
| 11. | | | | | |
| 12. | | | | | |
| 13. | | | | | |
| 14. | | | | | |
| 15. | | | | | |

To 7: Notice typed in final and forwarded to DDCI for signature. RCB will prepare field version from signed HN.

Approved For Release 2001/09/01 : CIA-RDP81-00142R000400070003-1

DD/A Registry

78-1825/1

DD/A Registry

File

2 JUN 1978

MEMORANDUM FOR: Deputy Director for Administration

FROM : F. W. M. Jarney
Director of Personnel

SUBJECT : Three-Year LWOP for Employees Accompanying Employee
Spouses to Assignments Outside the Headquarters
Area

1. Forwarded herewith for your review is a draft Headquarters Notice prepared in compliance with the EAG minutes of 2 May 1978. The Notice includes the specific points of the minutes for:

- a. Efforts for team assignments.
- b. Subsequent grants of LWOP if interspersed with three years staff employment.
- c. Extension of LWOP to cover spouse assignments extended for convenience of the Government.
- d. First consideration for suitable assignment on return to duty.

2. While the EAG minutes did not address length of employment before an individual becomes eligible for the initial grant of LWOP, we have extrapolated from the three year staff employment requirement before a subsequent LWOP and have tied approval of the grant to partial completion of the probationary period. The two years was selected as it is the break point for termination without appeal to the Director. Alternatively, the requirement could be established at one year, but whatever the limit, we believe there should be a reasonable one to preclude providing the extensive benefits and commitment of LWOP to employees who have been on board a matter of months. We note the Secretarial/Clerical MAG comments on the original paper included a proposal for three years employment before becoming eligible for this particular grant of LWOP.

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(Signed) F. W. M. Janney

F. W. M. Janney

Att.
As Stated

/s/John E. Blake

APPROVED :

Deputy Director for Administration

6 JUN 1978

Date

DISAPPROVED:

Deputy Director for Administration

Date

Distribution:

- Orig & 1 - DDA (Orig to be returned to D/Pers)
- 2 - D/Pers *Swy*
- 1 - OP/RS

STATINTL

OP/P&C/RS/  :cmc (31 May 78)

Approved For Release 2001/09/01 : CIA-RDP81-00142R000400070003-1
D R A F T

PERSONNEL

HN

THREE-YEAR LEAVE WITHOUT PAY POLICY

The Agency has now had approximately five years experience with the policy of granting three-years leave without pay (LWOP) to employees accompanying employee spouses to assignments outside the Headquarters area. While the initial intent was to limit this benefit to a one time grant, the policy has recently been reviewed by the Executive Advisory Committee and recommended new guidelines have been approved by the Deputy Director of Central Intelligence.

It is Agency policy to assign employee couples to the same field location whenever possible. Operating components make every effort within good personnel management practices, and the availability of appropriate positions, to accommodate the desires of these employees and to this end will give particular consideration for long-range planning for their assignments.

When dual assignments are not possible, one of the employees may request LWOP to accompany the employee spouse to an assignment outside the Headquarters area. The following guidelines will be followed in processing such requests:

a. A grant of three-years LWOP may be approved for employees who have either completed the former one-year trial period or two years of the new three-year trial period of employment.

b. A three-year LWOP grant may be extended when the tour of the assigned employee is extended for the convenience of the Government.

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The grant may also be extended to allow for a reasonable period of time after completion of the tour prior to return to duty, but not to exceed 60 days.

c. Subsequent grants of three-years LWOP may be approved provided they are interspersed with assignments as staff employees of at least three years duration.

d. Individuals who break the three-year LWOP with staff or contract employment may return to the LWOP status for the period of time remaining in the original grant if the assignment for which it was originally approved has not been completed. LWOP in the three-year grant unused during one tour assignment is not applicable to a subsequent tour.

This grant of three-years leave without pay does not guarantee reinstatement to staff status at the former grade and responsibilities upon return to Headquarters. Individuals in this status, however, are given first consideration by the parent organization for any vacant position for which qualified. Former employees, not approved for the three-year grant of LWOP, who wish to return to staff employment with the Agency are given next priority consideration for reappointment when suitable positions become available. Operating Officials who are unable to provide a suitable position for the returning employee spouse within their components will be assisted by the Career Service and the Office of Personnel in their placement efforts.

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MEMORANDUM FOR: Executive Advisory Group Members

SUBJECT : Minutes of the 2 May 1978 Executive Advisory Group Meeting (U)

1. (A/IUO) The Executive Advisory Group (EAG) met on 2 May 1978 to discuss two personnel management issues: (1) the Agency's Ninety Percent Rule as it Applies to Rehired Civilian Annuitants, and (2) the Agency's Three-Year Leave-Without-Pay Policy. The Office of Personnel (OP) had distributed papers on both topics (EAG 12/s & r) to EAG members prior to the meeting.

2. (A/IUO) Talking to the first issue, Mr. Janney, Director of Personnel, explained his recommendation that the Agency end a policy which limits the total amount of compensation and annuity payable to a rehired Federal civilian annuitant to 90 percent of the current salary of the grade/step he held at the time of retirement and that, in the case of an annuitant hired as an Independent Contractor, it establish the top step of GS-15 as the maximum amount he may be paid during a contract year. The present policy is no longer necessary to restrain the hiring of annuitants, he said, because, in addition to other deterrents, there is now tighter control over such hiring as the result of requirements for higher level management approval.

3. (A/IUO) During the discussion, Mr. Blake pointed out that the recommended change in policy would be equitable to CIA employees, as we would then be consistent with the practices of other agencies. The Agency would rely on the integrity of its managers to assure that people do not receive more money as rehired annuitants than they would as employees. In addition, the Office of Personnel in its monitoring role would ensure that abuses do not occur.

4. (A/IUO) EAG members unanimously favored the OP recommendation. Mr. Carlucci said he would take the matter up with the DCI. He asked Mr. Janney to furnish him a concise set of reasons for the proposed policy change.


5. (A/IUO) Talking to the second issue, Mr. Janney explained his recommendation that the policy of granting three years leave without pay (LWOP) to employees accompanying their employee-spouses to field assignments be amended so that such LWOP would be granted to an employee only once in his or her career. Exceptions would be made when justified. Frequent requests for extensions and second grants, he said, are today

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Government is not obtaining an equivalent return for the cost involved.
He also covered other problems, which were discussed in the staff paper.

6. (A/IUO) Prior to the meeting, comments had been received from the Secretarial/Clerical Management Advisory Group, the Federal Women's Program Coordinator, and the Federal Women's Program Board. These emphasized the impact the proposed policy would have upon women's careers and pleaded for better advance planning for employee couples' assignments to the field and for assuring appropriate reemployment of spouses upon their return to staff status at Headquarters, or at least giving them preferential hiring treatment. Mr. Carlucci focused EAG discussion upon these points.

7. (A/IUO) Mr. Ware emphasized that the Agency must recognize the changes that are occurring with respect to its workforce and female employees. It should strive to assist the assignment of couples to the field in cases where both spouses wish to pursue their careers, although he and the EAG recognized that there were limitations on such dual assignments. While employees understand that such assignments are not always possible, they must perceive that the Agency is making a strong effort in this direction, he said. Mr. McMahon affirmed that the DDO (which has somewhat less than half of the employees on LWOP in the field) is already making a strong effort in this regard and cannot improve its planning for the assignment of couples significantly. The proposed policy change, he said, would only make it more difficult to effect overseas assignments by taking away another benefit. The DDO, after all, gets "free" use of spouses as operational assistants to their case officers spouses, a circumstance which is closely related to this issue.

8. (A/IUO) Following discussion, Mr. Carlucci directed OP to revise Agency policy to specify that CIA will make every effort to accommodate the desires of couples to be assigned to the field as a team. In addition, the policy will emphasize that spouses who could not obtain field assignments with their employee-spouses will, upon return to the United States, be considered first for any vacancies which exist and for which they are qualified. The policy will also specify that components will grant additional three-year LWOP periods to such persons, provided that they are interspersed with assignments as staff employees of at least three years' duration. This requirement will be waived when the assignment of their spouses is extended for the convenience of the Agency.


James H. Taylor
Secretary
Executive Advisory Group

STATINTL

cc: Secretarial/Clerical Management Advisory Group

Approved For Release 2001/09/04 : CIA-RDP81-00142R000400070003-1, 5-8 Only
Federal Women's Program

COMMENTS REGARDING THE THREE-YEAR LWOP POLICY

Secretarial/Clerical MAG Recommendations

Proposals

OP Comments

- a. Three years of Agency employment before being eligible for three years LWOP.

We proposed 5 to 10 years because after this amount of time it is more likely that the employee would be committed to a "career" with the Agency.

- b. Grant a 90 day period of LWOP for employees returning to Headquarters to explore job opportunities.

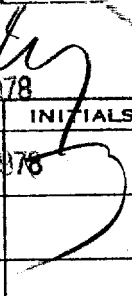

We recommended 60 days to coincide with the maximum time allowed the spouse for leave between assignments. Also, with better planning, most employees will know their next assignment before they depart from the post.

- c. Preferential reemployment treatment be given to employees returning to Headquarters from LWOP, contract status, or staff status.

We already give such treatment--other things being equal, a former employee, one on LWOP, or on contract is always given first consideration over an applicant.

- d. Strictures placed on employees who refuse an appropriate job overseas.

~~We do this now in that LWOP is not a right but requires managerial approval.~~

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|--|------------------|--------------|--|----------------|--|
| UNCLASSIFIED | | CONFIDENTIAL | | SECRET | |
| EO/DOR ADDA | | | | | |
| OFFICIAL ROUTING SLIP | | | | 1 MAY 1978 | |
| TO | NAME AND ADDRESS | | | DATE | INITIALS |
| 1 | EAG Members, DDA | | | 2 MAY 1978 |  |
| 2 | Registry | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| ACTION | | DIRECT REPLY | | PREPARE REPLY | |
| APPROVAL | | DISPATCH | | RECOMMENDATION | |
| COMMENT | | FILE | | RETURN | |
| CONCURRENCE | | INFORMATION | | SIGNATURE | |
| Remarks: The attached comments were forwarded to me regarding the issue of LWOP to be discussed at our <u>2 May meeting</u> and are for your information.  | | | | | |
| FOLD HERE TO RETURN TO SENDER | | | | | |
| | | | | DATE | |
| James H. Taylor, Secretary EAG | | | | 4/28/78 | |
| Approved For Release 2001/09/01 : CIA-RDP81-00142R000400070003-1 | | | | | |
| UNCLASSIFIED | | CONFIDENTIAL | | SECRET | |

STATINTL

CEIPT

78-0456

DD/A Registry

78-1825

27 April 1978

DD/A Registry

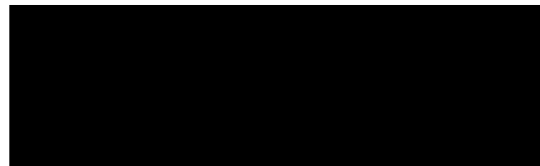
File *Personnel-2*

MEMORANDUM FOR: Secretary, EAG

SUBJECT : Three Year LWOP Policy

REFERENCE : Memo for ADCI, same subject, from
Acting Director of Personnel, dated
31 Dec 77

This is to acknowledge receipt of a copy of the referent memorandum this date. The Board membership would appreciate the opportunity to review and comment on the suggested policy changes. The Board has a continuing interest in the subject of working couples assigned to the field; our position was earlier stated in an attachment to a 22 November 1977 memorandum furnished to the DDO, with copies to DCI, DDS&T, DDA, DDCI and D/NFAC.



Chairman
Federal Women's Program Board

STATINTL

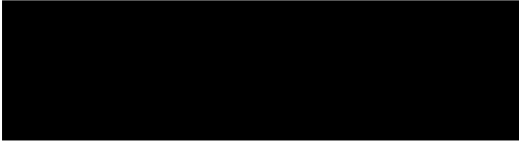
CEIPT

RECORD COPY

22 November 1977

MEMORANDUM FOR: Deputy Director for Operations
SUBJECT : Employment of Staff Couples Overseas
REFERENCE : 16 Nov 77 Memo for DDO Reps/Federal Women's Program Board, Same Subject

1. CIA women in all directorates frequently cite the placement of Agency staff couples overseas and on their return to Headquarters as a problem area. DDO focus on the issue will go a long way toward resolving the problem Agency-wide.
2. Various milestones in approaching the study of this personnel management problem are proposed in the attached reference. Not all of these measures will prove feasible, but the Board believes them worthy of careful examination.
3. We offer the Board mechanism and membership to assist in any way we can.


Chairman
Federal Women's Program Board

TATINTL

Attachment:
a/s

cc: DCI
DDSGT
DDA
DDCI
D/NEAC

MEMORANDUM FOR: Deputy Director for Operations

VIA : DDO/EEO

SUBJECT : Continuing Employment of Staff
Personnel Whose Spouses Are
Assigned Abroad

REFERENCE : 25 August 1977 Memorandum from DDO
to Director, EEO "FY 78 Equal
Employment Opportunity Plan"

1. We are pleased that you have included an objective in the FY 1978 EEO Plan on the continuing employment for staff personnel whose spouses are assigned overseas. We have had discussions with [REDACTED] regarding the administrative measures which might facilitate the placement of staff spouses abroad and we have talked to some DDO employees affected by this situation. We offer the following suggestions for consideration in studying this personnel management problem and finding solutions to it:

STATINTL

a. Identify what percentage of DO personnel are in this category and identify who they are.

b. Study the personnel files of these employees and identify their functional categories.

c. Identify on a world-wide basis the Stations and Bases where a variety of tasks and positions permit placement of staff couples.

d. Project personnel planning and forecasting two-three years ahead to identify positions which would be available at Stations/Bases simultaneously and/or within a three-nine month time frame of each other for staff couples. Make this information available in Division PEMS offices and/or Personnel offices to enable staff couples to know what possibilities exist.

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e. Establish an optional mechanism for staff couples to indicate (perhaps the FEQ and HRQ) the need to be considered for simultaneous overseas assignments.

f. Establish a central office within CMS to handle staff couples' assignment needs throughout the Directorate of Operations to assure that optimum consideration is given to proper use of this reservoir of experience and skills. This centralized office would also act as liaison with DO home base components and with those of the other directorates in instances where one employee spouse is a non-DO careerist.

g. Review applicable personnel regulations to determine how they might be changed to enhance rather than hamper placement of staff couples.

h. Create a Development Complement for staff employees who wish to work overseas at the same Station/Base as their spouses, but who are unable to do so because of the unavailability of an appropriate slot. These employees could be slotted at Headquarters and perform whatever functions for which they are qualified and the Station/Base has a need.


i. As a last resort, if LWOP and subsequent contract employment overseas is the only possibility, a staff employee should be hired at his/her current grade. If a staff employee must be hired on contract at a lower grade, he/she should be guaranteed in writing a return to his/her former staff status and grade upon return to Headquarters whether or not a position has been identified by the time the employee returns to Headquarters.

j. Extend the three year limit on LWOP to cover an employee the entire time a staff couple is overseas to permit an employee to return to Headquarters and be assigned.

k. Reassignment to Headquarters of a staff employee who has worked on contract in the field should be handled in the same manner as any staff

employees. The file should reflect all information containing to the period of contract employment overseas and not just that the staff employee went overseas to join an employee spouse overseas.

2. After the problem has been studied -- and decisions made as to what is feasible -- we suggest that the findings be made available to DDO employees. We think that this type of information will help employees to make more enlightened decisions about their careers.


DDO Co-ordinator
Federal Women's Program Board

STATINTL

27 APR 1978

MEMORANDUM FOR: Secretary, Executive Advisory Group

SUBJECT : Agency Three Year Leave Without Pay Policy

REFERENCE : Memo for ADDCI frm AD/OP, dtd 31 Dec 77, Same Subject, (EAG 12/s)

1. The Secretarial Clerical Management Advisory Group (MAG) appreciates the opportunity to comment on the referenced paper to the Executive Advisory Group (EAG). We agree that the leave without pay (LWOP) policy needs to be reviewed and in general agree with the revision as proposed in paragraph 11 a-d of the attachment to Reference. A few statements in the proposal, however, do not, in our view, accurately reflect many of today's situations in which both husband and wife are highly career conscious and valuable Agency employees. The MAG feels strongly that any regulation or accompanying statements implementing a new LWOP policy should avoid statements implying that only one individual in a couple can be a true careerist or that the onus is on the employee to make an early decision concerning where his/her career track will lead geographically.

2. The Secretarial Clerical MAG also submits the following items relating to LWOP for EAG consideration:

a. The period of prior Agency employment required before an initial grant of three years LWOP should be three years, rather than five or ten, to tie in with the three-year probationary period already in effect for new employees.


b. Paragraph 11 b provides: "Grants of 90 day LWOP in subsequent tours may be approved to enable the employee to explore opportunities for employment at the post without a break in service." This statement should be expanded to include a similar grant for an employee returning to the Headquarters area to explore employment opportunities without a break in service.

c. Language should be included in a revised regulation to provide for preferential consideration for reemployment upon an employee's return to the Headquarters area either from LWOP status or contract or other Agency employment status. We believe that if the Agency is hiring new employees in areas

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of a returnee's work experience, the returning employee should be given preference over a new applicant. This should be the responsibility of the Director of Personnel. CIA would benefit greatly by maintaining an individual with previous Agency experience, experience relevant to the position to be filled, and a previous security clearance. Perhaps an amendment as suggested in item b above would encourage adherence to and expeditious implementation of a preferential employment policy.

d. Some type of stricture might be considered for the employee who is offered a position overseas in a job related to his/her work experience and decides not to accept it. If, for example, an employee refused an offer of a contract position appropriate to his/her work experience at the post to which his/her spouse was assigned, the Agency could deny that employee LWOP during that overseas tour without jeopardizing his/her eligibility for a future grant of LWOP in different circumstances, i.e., employee desire to work but no suitable, available position.


Acting Chairman
Secretarial/Clerical MAG

STATINTL

cc: D/Pers

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Approved For Release 2001/09/01 : CIA-RDP81-00142R000400070003-1

78-0460

28 April 1978

MEMORANDUM FOR: Secretary, Executive Advisory Group

FROM : [REDACTED]
Federal Women's Program Coordinator

SUBJECT : Proposed LWOP Policy

1. This memorandum contains comments on the proposal before the Executive Advisory Group to limit Leave Without Pay for the purpose of accompanying an employee spouse to a field assignment to one such assignment, as presented in the paper by [REDACTED]

25X1A

2. This proposal would have a disparate effect on women since those mainly affected are staff wives of Agency employees. The overall issue however is not LWOP but the larger problem of providing an equitable means of properly utilizing the Agency's female workforce. Women already face numerous barriers in pursuing a career in the Agency and placing an unnecessary or arbitrary limitation on LWOP will exacerbate these problems.

3. The largest single concern of Agency women surfaced in my office has been that of the career problems faced by an employee whose spouse serves tours in the field. The Federal Women's Program has been seeking more flexibility, not less, in the personnel system to assist the increasing number of working couples. At issue is morale, cost effectiveness, marital harmony, in some cases financial hardships, and what may be an increasing immobility of males whose wives have promising careers.

4. The problems facing a career employee whose spouse is assigned to the field can be summarized as: finding a staff position at the same station; if none are available to locate a contract position commensurate with their training and experience; to be rehired upon return to Headquarters at the same grade held before going on LWOP. If improvements could be made in these areas, the LWOP issue would be secondary. I am impressed by the loyalty and concern for the Agency and its mission which has been evident in the complaints received. The common theme continues to be the improper utilization of training and expertise.

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CLASSIFIED BY... 018918

CONFIDENTIAL

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5. To address these problems, the following areas are suggested for further management consideration:

a) The need for better advance planning of field assignments where both husband and wife can be utilized effectively as staff employees

b) To explore the alternatives to the proposed LWOP policy

c) To explore innovative means of assuring re-employment of the spouse upon return to Headquarters and at the same grade held prior to leaving staff status.

6. Attached is a summary of the comments made by Agency women.

25X1A



Attachment:

Summary of comments

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Summary of Comments Made by
Agency Women on Field Assignments

1. The employees' perception that wives are considered "freebies" and are not seriously considered for staff positions in the field since they will be available to fill in as needed, usually as contract clericals.
2. The belief that a wife with operational experience is not considered for field staff positions since she and her husband will continue to operate as a team and her services can be had for free.
3. The employees' perception that women are equated with clericals and that wives are considered only for these positions in the field regardless of their previous experience or expertise.
4. The feeling of part time and full time contract employees that the work they are performing in the field is often beyond that of the grade they are assigned and that this experience does not show in their records.
5. The lack of communication to employees on the whole area of full and part time contract positions including what is negotiable, backstopping of employment for use in resumes, and which decisions are made at Headquarters versus the field.
6. The lack of flexibility in obtaining an assignment outside of the Directorate upon return to Headquarters, when faced with a grade cut.

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DD/A Registry

77-2523

COMINT 78-0189

28 SEP 1977

Executive Registry

77-2523

MEMORANDUM FOR: Acting Deputy Director of Central Intelligence

VIA: Acting Deputy Director for Administration *h*

FROM: F. W. M. Janney
Director of Personnel

SUBJECT: Reexamination of the Agency's Ninety Percent Rule as It Applies to Rehired Civilian Annuitants

REFERENCE: (A) Memorandum, dtd 31 Oct 74, from D/Pers to Secretary, CIA Management Committee; Subject: Ninety Percent Limitation on Total Compensation to Rehired Retired Annuitants

(B) Memorandum OGC 77-4850, dtd 29 Jul 77, to IG; Subject: Application of [REDACTED] to Rehired Military Annuitants

25X1A

1. Action Requested: That the Executive Advisory Group consider a revision in the current Agency policy on reemployed federal civilian annuitants.

2. Background:

a. Referent A memorandum concerned the CIA Management Committee's reaffirmation in November 1974 of the Agency's 90 percent limitation on the amount of compensation plus annuity payable to a federal civilian annuitant rehired as a contract employee.

b. Referent B memorandum is an OGC response to the Inspector General concerning the feasibility

Regraded Unclassified when separated from Confidential attachment(s).

E2 IMPDET
CL BY: 063837

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~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

of applying the Agency's 90 percent compensation limitation to rehired military annuitants. The opinion concludes that such an application would raise a substantial question. The opinion goes on, however, to suggest that consideration be given to reexamining the Agency's current 90 percent limitation upon the salary paid civilian annuitants as contract employees.

3. Staff Position:

a. Certain of the reasons behind the adoption of the 90 percent rule in 1967 have now been overtaken by subsequent events. Attached is a background paper tracing the reasoning beginning in 1964 through the adoption of the 90 percent rule in December 1967. The stated purposes behind the adoption of the 90 percent rule were:

"(1) To reduce pressures on Agency officials to reemploy annuitants by making continuing Agency employment less financially beneficial relative to non-government employment.

(2) To avoid situations where it actually costs the government more money in annuities and salary (or fees) than it would if the same work were performed by active career employees.

(3) To minimize criticism of the Agency by employees not extended or reemployed.

(4) To minimize the possibility that CIA will be criticized for evading its own retirement law or be accused of funding its current operations at the expense of the Retirement Fund."

b. For those civilian annuitants rehired as employees, the possibility of the accusation that the Agency is funding its current operations at the expense of the Retirement Fund is no longer applicable with the requirement effective 10 October 1976 that the amount of the annuity of a person so reemployed must be deposited by the Agency with the Civil Service Retirement Fund. A similar requirement will be applicable to CIARDS retroactive to 1 October 1976 upon publication of a proposed Executive Order.

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Next 1 Page(s) In Document Exempt

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Approved For Release 2001/09/01 : CIA-RDP81-00142R000400070003-1

4. Recommendation: It is recommended that:

a. The present 90 percent limitation be eliminated for those civilian annuitants rehired as employees, and

b. The ~~present~~ salary of the top step of GS-15 be established as the maximum limitation on the total remuneration (including annuity) payable to an independent contractor during a contract year.


F. W. M. Janney

25X1A

Attachments:

Referents A & B (Tab A)

Background Paper on 90% Rule (Tab B)

APPROVED:

Acting Deputy Director of Central Intelligence

DISAPPROVED:

Acting Deputy Director of Central Intelligence

Date _____

Distribution:

Orig - Return to D/Pers

1 - A/DDCI

1 - ER

2 - A/DDA

1 - D/Pers

1 - IG

2 - OP/CPD

Approved For Release 2001/09/01 : CIA-RDP81-00142R000400070003-1

CONFIDENTIAL

MEMORANDUM FOR: Secretary, CIA Management Committee

FROM : Director of Personnel

SUBJECT : Ninety Percent Limitation on Total Compensation to Rehired Retired Annuitants

1. Action Requested: That the Management Committee reconfirm the Agency's policy of the 90 percent limitation on the total compensation payable under [REDACTED] to U. S. Government civilian annuitants rehired as contract employees and that the applicable portion of [REDACTED] be revised to eliminate any ambiguity with regard to this policy.

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25X1A

2. Basic Data or Background: Attached is a copy of a memorandum, dated 25 April 1974, to the Secretary, CIA Management Committee concerning the Agency's policy on the method of computation of the total amount of compensation payable under [REDACTED] to civilian annuitants rehired by the Agency as contract employees.

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a. In late 1967 as a deterrent to the rehiring of annuitants, the Agency adopted the 90 percent limitation payable to retired annuitants hired under contract. Under that policy, the amount of compensation payable to a rehired annuitant plus his annuity cannot exceed 90 percent of the current salary of the grade and step held at the time of retirement. Independent contractors thus rehired are normally paid on a fee per task basis with the 90 percent limitation based on total compensation payable during a contract year.

b. The same 90 percent limitation applies to those annuitants rehired as contract employees except that, if employed on less than a full time basis, the contractual per hour compensation must be reduced by the per hour annuity rate. The pertinent portion of [REDACTED] as it pertains to employment of retired annuitants as contract employees reads:

25X1A

"The salary to be paid will be negotiated with due regard to the special qualifications of the individual and requirements of the assignment. However, in no case may the salary payments to the annuitant under contract plus his annuity exceed the pay rate of the step closest to 90 percent of the current salary of the individual's grade and step at the time of his retirement."

MCA-107

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3. Staff Position: The Deputy Director of Administration concurs in the recommendation listed below.

4. Recommendations: a. That you reconfirm the 90 percent compensation limitation payable to civilian annuitants rehired as contract employees or independent contractors.

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b. Approve the following revision to [REDACTED] to eliminate any ambiguity as to the amount of compensation payable under the 90 percent rule to an annuitant rehired as a contract employee:

"Contract Employee. The salary to be paid will be negotiated with due regard to the special qualifications of the individual and requirements of the assignment. However, in no case may the salary payments to the annuitant under contract plus his annuity exceed the pay rate of the step closest to 90 percent of the current salary and grade and step at the time of his retirement. The foregoing requirement applies identically to compensation expressed in any individual time increments, i.e., per hour."

25X1A

[REDACTED]
F. W. M. Janney
Director of Personnel

25X1A

APPROVED: [REDACTED]

DISAPPROVED: _____

22 NOV 1974
Date

Distribution:

- Original - Return to D/Pers
- 11 - CIA Management Committee
- 1 - ER
- 1 - D/Pers
- 1 - OP/CPD (for review)

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OGC 77-481
29 July 1977

MEMORANDUM FOR: Inspector General

25X1A

FROM : [REDACTED]
Assistant General Counsel

25X1A

SUBJECT : Application of [REDACTED] to Rehired Military Annuitants

25X1A

1. You have asked for the opinion of this Office whether the provisions of [REDACTED] can lawfully be applied to rehired military annuitants, as well as rehired civilian annuitants. [REDACTED] reads as follows: 25X1A

(1) Contract Employee. The salary to be paid will be negotiated with due regard to the qualifications of the individual and requirements of the assignment. However, in no case may the combination of salary plus annuity computed on an hourly basis exceed the grade and pay step that provides an hourly rate of pay closest to 90 percent of the current salary of the annuitant's grade and step at the time of his or her retirement.

25X1A

2. Certainly the terms of the first sentence can be applied to all annuitants. And it is our opinion that some of the concepts embodied in the second sentence could be applied to all annuitants, though it is arguable that they could be applied pursuant to the language as it now exists. The second sentence of [REDACTED] as it presently stands involves several interrelated elements: a limitation on the combination of salary plus annuity, which is further limited in that the ceiling is set relative to the rate of compensation received at the time of retirement, and which is still further limited because the ceiling is set at less than 100% of the rate of compensation received at the time of retirement. We will discuss each of these elements in turn.

3. The first of these elements, the establishment of a limitation upon the combination of salary plus annuity would create a substantial problem, in our view, if it were to be applied to military annuitants, since the statutory entitlement to a continuing annuity is quite different for civilian annuitants who may become contract employees of the Agency, than it is for military retirees who may do so. In the case of civilian annuitants, the annuity continues, but a like amount is subtracted from the salary which is paid. (5 U.S.C. 8344)

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This has the effect of the annuitant's receiving the full salary for the position, but receiving no annuity. The military annuitant is entitled to the full salary for the position. And, even when the dual pay provisions of the U.S. Code (5 U.S.C. 5532) apply, at least a limited portion of the military annuity continues to be payable. In sum then, the civilian annuitant receives simply the equivalent of the full salary for the position, while the military annuitant receives the full salary for the position plus some part of the military annuity.

4. While it might in fact be possible to devise a method for applying this element of the provision to rehired military annuitants, given the Agency's relative freedom in the area of personal services contracts, we believe it would be inappropriate to do so. Since a military annuitant continues to realize some portion of his or her annuity when rehired in these circumstances, and the civilian annuitant does not, the only way in which it appears possible to pay equal total compensation, salary and annuity combined, to both civilian and military annuitants, is to pay the military annuitant less salary for the same duties as compared to the civilian annuitant, in order to offset the continuing military annuity. Such an arrangement would put the Agency in the position of penalizing a military annuitant for the existence of an entitlement specifically awarded by the Congress for past services. While it may be possible for us to achieve such a result, it is also quite possible that such a step could be viewed as an abuse of the Agency's special authorities. Consequently, we would counsel against such a step.

5. The second element of this provision encompasses, I believe, the principal point of your question to us. This provision limits the salary which can be paid a civilian annuitant in terms of the grade which the annuitant held at the time of retirement. There is no such limitation on rehired military annuitants. As you point out, a military retiree can be hired by this Agency as a contract employee at whatever grade is considered appropriate, in terms of personal qualifications and the requirements of the job. On the other hand, a civilian annuitant cannot, under the terms of this provision, be paid at a rate which exceeds 90% of the current salary of the rating at which he retired.

6. In our opinion, there is no legal restriction that would preclude the Agency from imposing a limitation on the salary paid military annuitants hired as contract employees just as it does with civilian annuitants. Indeed, the more difficult burden for the Agency may be to demonstrate why it may properly treat one category of annuitants substantially differently than it treats another. While this procedure is not patently impermissible the reasons for the Agency's making this distinction are not readily apparent. In fact, it may be useful to investigate the rationale upon which this distinction is based, in order to determine its sufficiency. Alternatively, it may be more useful to reevaluate the policy supporting such a distinction, even if the basis for it is found to be sufficient.

7. The third element of the provision - the imposition of the 90% limitation upon civilian annuitants - is the second element. In our view, the Agency can legally apply such a limitation, since the Agency is exempt from the terms of the Classification Act of 1949 (P.L. 81-429; see 5 U.S.C. 5102) and the Acting Director's statement of 8 October 1962, setting a policy of voluntary compliance with the terms of the Act applied only to staff personnel. We speak here of contract personnel.

8. This 90% limitation was implemented by the Agency in 1967 as an additional means to control the burgeoning number of retired civilian annuitants who were being hired as contract employees. Since the administrative procedures then in force were not effectively limiting the number of civilian annuitants being rehired, some additional restraint was considered necessary in order to actually limit their numbers. This 90% limitation worked to make employment with CIA less attractive financially to the annuitant, compared to service elsewhere in the government or outside the government, making it less likely that the annuitant would apply for a position with this Agency.

9. In our opinion, the imposition of such a percentage limitation upon the salary of rehired annuitants is, in itself, permissible as one means of promoting certain appropriate organizational goals. These could include for example, making more opportunities available to staff employees, and limiting the number of persons who draw a salary plus an annuity from the government. Here too, our concern is not that such a limitation is applied to annuitants, but the rationale under which it is applied to some annuitants but not others.

10. In our opinion, it would not be wise to simply attempt to apply [REDACTED], as it is presently drawn, to military annuitants. At the least, the provision which places a limitation upon the combination of salary plus annuity would raise a substantial question.

11. Rather, it is suggested that consideration should be given to re-examining the policies behind both the differing salary treatment now accorded by the Agency to civilian and military annuitants who are hired as contract employees, and the continuation of the 90% limitation upon the salary paid civilian annuitants rehired as contract employees. In the event the decision is made to promulgate a policy according equal salary treatment to both military and civilian annuitants, it is our opinion that [REDACTED] would need to be substantially revised.

12. As you know, these provisions are currently being revised, though the scope of the revisions contemplated is relatively minor. As part of our response to Regulation Control Branch, we have advised them that you have raised a basic question concerning these provisions.

Attachment

BACKGROUND TO 1967 AGENCY ADOPTION OF
NINETY PERCENT LIMITATION ON TOTAL
COMPENSATION OF REHIRED FEDERAL CIVILIAN ANNUITANTS

1. In a memorandum dated 21 December 1964 to the four Deputy Directors, the Director of Personnel stated that recent developments in the Agency's retirement program, particularly passage of the CIA Retirement Act, had stimulated a number of questions about the reemployment of retired staff personnel. He then went on to state that any annuitant rehired by appointment or contract to perform duties, as an employee either: (1) would have his annuity discontinued and be paid only the salary appropriate to his duties, or (2) would continue receiving annuity payments but would have his salary during reemployment reduced by the annuity received. In any event, however, such a reemployed annuitant cannot receive a combination of salary and annuity payments in excess of the salary of the duties he performs during reemployment.

2. The 1964 memorandum, however, went on to state: "An annuitant who is hired as an independent contractor to perform services on an infrequent and intermittent basis shall be paid a fee according to the value of those, with no offset or reduction in his retirement annuity."

3. The clear distinction being made above, of course, was between employee and independent contractor. OGC had stated that the Civil Service Retirement Act and the Agency Retirement Act in authorizing reemployment and providing for the continuation of annuity payments both specify that "there shall be deducted from his salary a sum equal to the annuity allocable to the period of actual employment."

4. In January 1966, the DDP, apparently concerned over the number of retired annuitants being hired in the field as independent contractors, issued a memorandum to his division and staff chiefs containing guidelines for

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the rehiring of annuitants. Among other things, the requirement was imposed that no annuitant could be rehired as an independent contractor except with the specific prior approval of the DDP. He also stated that the total of the annuitant's retirement annuity and his annual contract fee may not exceed his annual salary at the time of his retirement.

25X1A

5. On 2 March 1967, [REDACTED], Contract Employment of Annuitants, was published containing the Agency policy on the rehiring of annuitants. Policy expressed in that notice was to the effect that it is expected that employees, upon retirement, will sever active connection with the Agency. A civilian annuitant, whether retired from this Agency or from any other Agency of the Government, may not be hired in any contractual capacity whether as an independent contractor or contract employee without the specific prior approval of the Deputy Director concerned and the Director of Personnel. Contracts will be limited to one year with the understanding that they will be terminated earlier if a suitable replacement can be obtained. The gross contractual compensation plus annuity for both contract employees and independent contractor rehired annuitants will not exceed the current salary of the grade and step held at the time of retirement.

6. Then in November 1967, Mr. Echols made a presentation to the Executive Director-Comptroller, the Deputy Directors, IG and General Counsel expressing his concern at the number of reemployed annuitants in the Agency (there were 131 as of 30 October that year). He stated that many of our contract employee annuitants were costing the government more money to perform lesser services than they did as career employees. He went on to say, "In many cases, it would have been less costly to have extended the employee in service and assign him to his contract duties. Finally, I found that many, if not most, of these reemployed annuitants had actually increased their expendable income by the process of retiring and being reemployed." In summary, he proposed a "more objective and realistic job classification" and that a guideline be set on the salary or fee appropriate to the level and amount of work to be done and that this limit be based upon computed net take-home pay. The objectives of these proposals were:

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"1. To reduce pressures on Agency officials to reemploy annuitants by making continuing Agency employment less financially beneficial relative to non-government employment."

"2. To avoid situations where it actually costs the government more money in annuities and salary (or fees) than it would if the same work were performed by active career employees."

"3. To minimize criticism of the Agency by employees not extended or reemployed."

"To minimize the possibility that CIA will be criticized for evading its own retirement law or be accused of funding its current operations at the expense of the Retirement Fund."

7. At this point, the written record becomes rather skimpy as to what transpired. On 8 December 1967, Mr. Echols sent a memorandum to the Executive Director-Comptroller saying he had just returned from leave and learned that there was an urgent need to establish more precise concepts and policies regarding the contractual employment of annuitants. The Director of Personnel appended a background paper to his memorandum expressing his misgivings over the Agency's extended use of employees after age sixty. He attached a proposed revision to [REDACTED] which, among other things, addressed itself to the amount of compensation which could be paid a rehired annuitant but was silent on the 90 percent limitation. That draft proposed that:

"The gross contractual salary of a reemployed annuitant will be determined solely by the nature of the duties he performs. Excepting where a higher classification is established by formal position classification processes and approved by the Director of Personnel, gross contractual salary may not exceed the lesser of:

"(a) The current salary of the grade and step held by the employee at the time of retirement."

"(b) An amount equal to the current top step of grade GS-15."

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"(c) An amount equal to the top step of the grade below that held at the time of retirement. This is in recognition of normally reduced managerial and organizational responsibilities."

25X1A 8. The files do not reflect this, but apparently there were conversations between Mr. Echols and Col. White between 8 December 1967 (the date of Mr. Echols' memorandum) and 22 December 1967, the date of a memorandum for the record by [REDACTED] concerning his meeting that morning with Col White. The pertinent portions of that memorandum are quoted:

25X1A "During the morning of 22 December 1967, I had a discussion with Col. White regarding the new guidelines [REDACTED] for retired annuitants in general and the cases of Messrs. [REDACTED] and J. C. King in particular." 25X1A

25X1A "I showed Col. White how we had used the new 90 percent rule to arrive at a fee of \$9,530 p/a for [REDACTED] and how, using the same principle, the maximum fee payable to Col. King would be \$14,366 p/a. I explained to Col White that we had not as yet received the check list for Col. King, that it was in Mr. Karamessines' office."

"Col White indicated that these two cases were O.K. with him, and he did not need to see them again. He did say, however, that he wanted to see other cases involving senior Agency officials until things had "shaken down" a bit."

25X1A "In my presence, he 'approved' the latest draft of [REDACTED] which he had discussed with the Director 20 December 1967. He dictated a note to Mr. Karamessines informing him that the new guidelines would be effective as of 20 December. He then asked his secretary to xerox a copy of the draft for Mr. Karamessines' use until [REDACTED] could be printed in final form and published." 25X1A

9. Thus the 90 percent limitation came into existence in late December 1967 after the Executive Director-Comptroller had obtained the Director's approval for its implementation to be effective 20 December 1967.

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Executive Registry

77-109162

COMPT 78-0157

31 DEC 1977

MEMORANDUM FOR: Acting Deputy Director of Central Intelligence

STATINTL

FROM : [REDACTED]
Acting Director of Personnel

SUBJECT : Agency Three Year Leave Without Pay Policy

STATINTL

REFERENCE : [REDACTED] paragraph 11

1. Attached is a memorandum prepared by my staff on the Agency's policy of granting three years leave without pay to employees accompanying employee spouses to assignments outside the Headquarters area. Also attached is a copy of reference which delineates the policy in regulation.

2. The Agency has now had approximately five years' experience with this policy and we believe it is appropriate that it be reviewed by senior management for its impact on personnel management procedures. The one-time grant poses no particular problem; it is the continuing extensions and requests for second grants which we believe go beyond the original intent of the policy and of sound management practices. We understand the employee's interest in retaining the relationship for the staff grade and position, but are concerned how long this can be maintained when the employee is unavailable for assignment for long periods of time or for equally long periods performs work unrelated to the grade or responsibilities of the staff grade or occupation. This concern is apart from the benefits which accrue in the nonworking status.

3. Not noted in the paper, but a situation which supports the recommendation therein to limit the number and lengths of grants, is the problem being encountered in identifying staff positions at the former grade for some employees returning from these lengthy LWOPs.

EAO 12/s

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If there is occasional difficulty finding positions which will support the former grade or occupation for these returnees after an absence of three or four years, we can only assume the problem will be exacerbated by a longer absence, particularly in the professional field.

4. Consideration was given to including in the recommendations a restriction that even the initial grant of three years' LWOP would be approved only for individuals who have been employed in the Agency for a minimum of five or ten years. Such a caveat would fit with the concept that the LWOP is granted to persons who have established the basis for an Agency career and the grant is in recognition of their value to the Agency. We are aware a restriction of this magnitude to a policy which is regarded as a "right" and not a "privilege" would create serious complaints from employees, but believe it is worth a review.

5. It is recommended that the subject of limiting the number and length of the three year LWOP grants be reviewed by the EAG.

STATINTL

Att.

STATINTL

APPROVED

Acting Deputy Director of
Central Intelligence

9 Feb 78
Date

DISAPPROVED:

Acting Deputy Director of
Central Intelligence

Date

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MEMORANDUM FOR: Acting Director of Personnel

STATINTL

FROM : [REDACTED]
Chief, Review Staff, OP

SUBJECT : Agency Three Year Leave Without Pay Policy

1. This memorandum contains a recommendation for a limit on the number of times an employee may be granted LWOP to accompany a spouse to assignments outside the headquarters area.

2. In October 1972 the then Executive Director Comptroller approved a policy for granting three years' leave without pay (LWOP) for Agency employees accompanying Agency employee spouses to field assignments where there is no opportunity for assignment to a staff position for both members of the family. The policy was published, with the procedures for administering the program, in [REDACTED] in December 1972.

STATINTL

3. The published policy makes no reference to restrictions or limitations for the granting of extensions or subsequent second periods of three years, nor does any of the backup material. The memorandum which approved the establishment of the policy makes reference to the State Department's policy for granting LWOP for one full tour of duty and includes a statement of the proposed revision that the nonassigned spouse will be carried "on leave without pay for a maximum of three years". There was obviously no intention of providing a continuing series of three year LWOP grants.

4. The policy has now been in effect for approximately five years and the full impact of not having provided specific limitations is being felt. There are continuing requests for extension of the three year grant and for second grants to cover a second overseas

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tour, several back to back. We believe the policy needs a thorough reconsideration and the establishment of specific provisions which reflect the interests of the Agency management, provides equity in benefits to the Agency and the employee, and clarifies for the employee what constitutes a "career".

5. LWOP status provides certain benefits of considerable value to the employee and cost to the Government. Hospitalization Insurance and FEGLI coverage, both government sponsored programs, are continued for one year without employee contribution, and six months credit is given for retirement purposes for each calendar year of LWOP. An employee on three years LWOP, therefore, can receive 18 to 24 months retirement credit without contribution to the retirement system and a full year of free insurance coverage. In situations of frequent grants of LWOP the Government would be providing sizeable benefits without obtaining an equivalent return.

6. The Federal and Agency guidelines for granting LWOP are basically three:

(a) the employees will acquire increased job ability (i.e., LWOP for educational purposes);

(b) the employee will protect or improve his/her health or the health of a family member; or

(c) the services of a desirable employee will be retained. The three year LWOP policy for employee spouses derives from this last provision, and can be considered to be within the spirit of the rules. Continuing grants of LWOP, however, would not, in the full sense, be retaining the services of an employee if that employee is spending only part of a career on actual duty.

7. The major impact of this program is in the DDO and we are advised every effort is made to identify staff positions for both employees when one has been selected for assignment outside the headquarters area. Appropriate positions are not always available, however, hence the frequent requests to grant the three year LWOP, albeit followed in many cases by contract employment at the new post.

8. Viewed in long range terms, we do not believe the Agency can, or should, guarantee continuing careers in staff or contract status to employees who are restricted in their availability for assignment. A married employee who plans to accompany a spouse to assignments outside the headquarters area is restricting his/her availability for continuing work. It is not realistic to think frequent breaks in service occasioned by LWOP grants, or contract service in disciplines unrelated to the staff grade or normal career track of the individual, will permit continuing career development of the employee. The individual, for example, who does not work in his or her own discipline or profession for six to nine years out of a 12 or 15 year period hardly qualifies as an experienced employee for assignment in comparison to those who have devoted full time, or relatively full time, to their career development and assignments. While this situation is probably not true of clerical/secretarial employees to the same degree, inasmuch as the level or scope of contract employment more often nearly equates to the former staff grade and responsibilities, to be equitable in the treatment of all employees there can be only one three year LWOP policy. We do not believe exceptions can be made for individuals who may obtain contract employment in a related career field in contrast to those for whom the contract work is not available or is in an unrelated field, i.e., the GS-09 reports officer who contracts for a GS-05 clerk position. A policy of this scope must be applied equally to all employees and cannot be used to provide benefits to one person in excess of those available to another in the same basic situation. We are all aware the timing of assignment, date of arrival at post, etal, are determining factors in who gets what job, if any.

9. The three year LWOP grant to accompany a spouse to an assignment is a special benefit and continuing grants could be viewed as an abuse of this privilege. Employment in the Agency, by regulation, is not a tenured status and it cannot be construed by anyone that initial employment carries a guarantee of employment (staff or contract) to retirement regardless of the individual's personal status and obligations or elections as a husband, wife or parent. There is a quid pro quo here, and the approval of one long grant of leave without pay to provide for the interruption of an individual's employment because of personal circumstances (e.g., the assignment of the spouse) is more than adequate consideration.

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10. Inasmuch as the three year LWOP memorandum signed by the individual does not guarantee reinstatement in staff status, but only promises to make every effort to identify a position comparable to the one previously held, with any reinstatement at the grade of the position, we do not believe the LWOP status is absolutely necessary to insure consideration for a staff appointment on return to headquarters. Employees with good records, and particularly in the secretarial/clerical group, are normally reemployed when ceiling and requirements permit, the same situation which obtains on return from the three years LWOP. The argument that some employees make, i.e., that the Agency is depriving them of their career opportunities by assigning one spouse away from headquarters and therefore must be responsible for continuing salary levels or staff status, is invalid. If their individual careers are of such importance to both the husband and the wife, they should make that decision early in their Agency employment and choose career tracks which do not require frequent changes of assignment outside the headquarters area.

11. In consideration of the equities in terms of the employee, the Agency and the government employee benefits provided, we recommend the policy as now stated in the Handbook be reissued with specific restrictions or limitations. The revision would specify the following:

(a) Grants for the three year LWOP to accompany employee spouses to a field assignment may be approved for only one such assignment. Unused parts of the LWOP grant because of contract employment cannot be carried over to subsequent assignments or tours.

(b) Grants of 90 day LWOP in subsequent tours may be approved to enable the employee to explore opportunities for employment at the post without a break in service.

(c) Extension of the original three year grant will be approved only to permit return travel and reasonable leave when the spouse's tour totals the three years of the original request. Extensions for this purpose will not be approved beyond 60 days, limited to travel and home leave of spouse. (If the DDO goes to four year tours, established at beginning of assignment, this period could be extended to 4 years plus 60 days for travel and home leave.) There would be no extensions for personal reasons.

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(d) An exception to provision (a) may be granted by the Director of Personnel for one additional three year LWOP in unusual circumstances, such as when the second tour is separated by a lengthy period of time from the first, not less than five years, or is required because of unique qualifications of one spouse for the particular assignment and is not contemplated the spouse would be subsequently assigned to another field position.

12. We recognize this is radical surgery, but believe it must be done in terms of equity for everyone, and before precedent establishes continuing LWOP grants as Agency policy. At first blush the DDO may have problems with this proposal, but in the long run it should better serve their purposes in the development of their personnel. Where both employees are of identified importance to the Service, it would create a need for advance assignment planning to insure every effort is made to identify dual assignments in order to utilize the services of both employees in an appropriate manner. The DDO contract positions have all now been converted to graded positions on the Staffing Complement which should ease the assignment planning exercise and better define their personnel needs and options. (Mode, of course, can affect the staff and/or contract encumbrance of certain positions at overseas posts.) The one LWOP grant would be held in reserve for the assignment where only one of the spouses can be assigned to a position. In a career of 15 years abroad, probably slightly above the average service, with one LWOP for each spouse, it is hoped dual assignments could be developed for the other nine years . . . three assignments at most. If such planning cannot be worked out, there can obviously be only one true careerist in the couple.

STATINTL

- (h) Employees dismissed early or excused from duty will not be charged annual leave; however, an employee (1) who is on leave when early dismissal is authorized, or (2) who is on leave or scheduled to be on leave on a day when there is a general closing of Federal offices will be charged leave as appropriate.
- (i) Questions regarding the release of employees because of weather conditions should be referred to the Office of Personnel.

1. Not used.

m. OTHER EXCUSED ABSENCES

Employees may be excused from duty without charge to leave or loss of pay when they are precluded from working because of the closing of their workplace or for the purpose of participating in civil activities which the Federal Government requires or is interested in encouraging. Such excused absences will be administered in accordance with prevailing Federal practice unless specifically provided for in Agency regulatory issuances.

11. LEAVE OF ABSENCE TO PERMIT AGENCY EMPLOYEES TO ACCOMPANY THEIR SPOUSES TO OTHER GEOGRAPHIC AREAS

- a. When an employee whose spouse is employed by the Agency is assigned PCS to a field duty station and there is no suitable requirement for the spouse's employment at the new post, the Head of the spouse's Career Service and the Director of Personnel will carry the spouse on leave without pay, following the expiration of accrued annual leave, during the employee's assignment up to a maximum of three years. Should the spouse accept contract employment during this period, the contract will provide for automatic reversion to LWOP status in the event the contract is terminated prior to the spouse's return to headquarters and within the three-year period. Should the spouse not become available to return to duty at headquarters by the end of the three years, the spouse's staff employment status will be terminated. The spouse will sign Form 3510, Memorandum of Understanding (figure 1), before the LWOP action becomes effective.

- b. An employee whose spouse is not employed by the Agency and who plans to accompany the spouse to a new location may be carried in a leave status for 90 calendar days provided such action is in the best interests of the Agency. Extension of the 90-day period may be granted by the Head of the employee's Career Service only in those cases where a specific commitment has been made for return to pay status within a reasonable period of time. The 90-day period will include all annual leave to the employee's credit plus such leave without pay as is necessary to assure retention of status for 90 days after the employee's last working day.

12. ABSENCE WITHOUT LEAVE

- a. Absence without leave is an unauthorized absence from duty. An employee will receive no pay for a period of absence without leave. Disciplinary action may also be taken if appropriate.
- b. Absence without leave will be reported as AWOL in the LWOP column of the Time and Attendance Report. If it is later determined that the absence was justified, leave may be retroactively approved. In such case, the Time and Attendance Report should be amended so that the absence is charged to an appropriate leave account.

FOR THE DIRECTOR OF CENTRAL INTELLIGENCE:

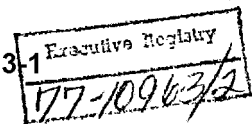
JOHN W. COFFEY
Deputy Director
for Support

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Revised: 20 December 1972

27

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OGC 78-0780

8 February 1978

MEMORANDUM FOR: Acting Deputy Director of Central Intelligence

FROM : [REDACTED]
Assistant General Counsel

SUBJECT : Leave Without Pay

1. (U) You have requested our opinion on the legality of the current Agency policy of granting three years leave without pay (hereinafter LWOP) to Agency employees who accompany their Agency employed spouse to other geographical locations. In addition, you requested that we specifically comment on whether such a policy is inequitable or discriminatory since it is limited to married employees whose spouses are also Agency employees.

2. (C) It is our opinion that the Agency policy as expressed in [REDACTED] is legal. LWOP is a temporary, non-pay absence from duty that may be authorized by the head of an agency. Civil Service regulations note that the granting of LWOP is a matter of administrative discretion and that employees, with few exceptions (not pertinent here), cannot demand that they be granted LWOP as a matter of right. General standards for the granting of LWOP have been agreed on between executive agencies and departments, and in turn, endorsed by the Civil Service Commission.² The Commission has specifically indicated, however, that these standards are non-regulatory in character and are not mandatory on agency heads. Even though not binding, the Agency has, as a matter of policy, elected to generally follow the guidelines established for the rest of the Government. This guidance is found in [REDACTED] which sets forth the following circumstances when LWOP will be considered for approval:

1/ [REDACTED] is reproduced in its entirety at tab A.

2/ These standards are found in paragraph 512-2, Book 630, FPM Supp. 990-2 (1969).

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- (2) Requests for extended leave without pay will be reviewed to assure that the interests of the Agency or the serious needs of the employee are sufficient to justify the retention of an employee in a leave-without-pay status. As a basic condition to approval, there should be reasonable expectation that the employee will return at the end of the approved period, and it should be apparent that at least one of the following benefits would result:
- (a) The employee will acquire increased job ability; for example, leave for education purposes when the course of study or research is in line with a type of work which the employee might be expected to preform for the Agency, or leave to permit temporary employment with non-Federal public or private enterprise when his service will contribute to the public welfare or the experience he will gain will serve the interests of the Agency.
 - (b) The employee will protect or improve his health or the health of a member of his family; for example, leave to permit recovery from illness or disability which is not of a permanent or disqualifying nature, when continued employment or immediate return to employment would threaten impairment of the employee's health or the health of other employees; or leave to permit the employee to remain on the Agency's rolls pending final action on a claim for disability retirement or a claim under the Federal Employee's Compensation Act.
 - (c) The services of a desirable employees will be retained.

STATINTL

3. (U) [REDACTED], in our view, merely identifies specific situations where it has been predetermined that one or more of the general factors cited in paragraph 2(a) through 2(c) above have been met. It identifies circumstances where the agency head has exercised his discretion to balance the value of the employee's continued association with the Government against the cost and administrative inconvenience associated with granting the employee LWOP for an extended period of time. So long as this decision does not restrict or deny

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other employees the opportunity to seek approval of extended LWOP under similar circumstances it does not, in our view, discriminate. [REDACTED] does not eliminate the possibility that other individuals, not falling within the specific class identified in [REDACTED], may receive identical treatment under the general provisions contained in [REDACTED].

4. (U) With respect to your specific questions, the following answers are provided:

(a) Is the policy discriminatory on the basis of marital status?

Yes, [REDACTED] clearly favors married employees over unmarried employees. However, many provisions of our regulations contain entitlements which provide for increased benefits based upon the employee's marital status (several examples can be found in the travel and transportation area). We do not view such regulations as illegal or improper if they are based on rational personnel considerations. Further, and perhaps more importantly, an unmarried employee may submit a request for LWOP under the general provisions of [REDACTED]. If the question is whether an Agency employee who lives with, but is not married to, an Agency employee is discriminated against, our answer would still be the same. Though it may be inequitable, the employee has the opportunity to pursue a similar authorization under the general provisions of [REDACTED].

(b) Is the policy inequitable because it covers only Agency employees whose spouses are Agency employees?

Yes, it may be inequitable, but not necessarily objectionable. [REDACTED] sets forth the Agency policy that Agency employees whose spouses are not in Agency employment are only granted 90 days LWOP. As we have stated previously, however, the initial determination as to whether LWOP should be granted at all is a balancing test between the potential continued value of the Government's continuing its association with this employee against the cost and administrative inconvenience of putting the individual on LWOP for an extended period of time. There may be cogent personnel reasons which would substantiate that the different treatment of Agency employees whose spouses are Agency employees and those whose spouses are not Agency employees is both proper and reasonable.

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5. (U) In summary, it is our view that the current Agency regulation providing for the granting of LWOP for periods up to three years is legal. Further, this Office does not view the provision in [REDACTED], providing STATINTL for the authorized granting of LWOP to Agency employees to accompany their Agency employed spouses to other geographical locations as improper. While the Agency practice, as expressed in [REDACTED], may be inequitable, if STATINTL justified by proper personnel considerations, this Office would not object to its continued application.

STATINTL

Attachment

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STATINTL

states:

11. LEAVE OF ABSENCE TO PERMIT AGENCY EMPLOYEES TO ACCOMPANY THEIR SPOUSES TO OTHER GEOGRAPHIC AREAS
 - a. When an employee whose spouse is employed by the Agency is assigned PCS to a field duty station and there is no suitable requirement for the spouse's employment at the new post, the Head of the spouse's Career Service and the Director of Personnel will carry the spouse on leave without pay, following the expiration of accrued annual leave, during the employee's assignment up to a maximum of three years. Should the spouse accept contract employment during this period, the contract will provide for automatic reversion to LWOP status in the event the contract is terminated prior to the spouse's return to headquarters and within the three-year period. Should the spouse not become available to return to duty at headquarters by the end of the three years, the spouse's staff employment status will be terminated. The spouse will sign Form 3510, Memorandum of Understanding (figure 1), before the LWOP action becomes effective.
 - b. An employee whose spouse is not employed by the Agency and who plans to accompany the spouse to a new location may be carried in a leave status for 90 calendar days provided such action is in the best interests of the Agency. Extension of the 90-day period may be granted by the Head of the employee's Career Service only in those cases where a specific commitment has been made for return to pay status within a reasonable period of time. The 90-day period will include all annual leave to the employee's credit plus such leave without pay as is necessary to assure retention of status for 90 days after the employee's last working day.

TO:

| | | ACTION | INFO. | | | ACTION | INFO. |
|----|-----------|------------|-------|----|----------|--------|-------|
| 1 | DCI | | | 11 | LC | | |
| 2 | DDCI | 5 JAN 1978 | | 12 | IG | | |
| 3 | S/MC | | | 13 | Compt | | |
| 4 | DDS&T | | | 14 | Asst/DCI | | |
| 5 | DDI | | | 15 | AO/DCI | | |
| 6 | DDM&S | | | 16 | Ex/Sec | | |
| 7 | DDO | | | 17 | | | |
| 8 | D/DCI/IC | | | 18 | | | |
| 9 | D/DCI/NIO | | | 19 | | | |
| 10 | GC | | | 20 | | | |

SUSPENSE _____

Date

Remarks:

Mr Blake

I concur in the recommendation that the EAGC should review the 3 yrs CWO policy. First, I think we should get an OGC opinion on the legality. I hear more & more grumbles about the policy.

I have attached a suggested memo which raises the questions I hear most frequently. Barbara 1/4/78

Mr Blake signed Jan 5, 78.

2/1 OGC 6/6 & reb.

DCI/DDCI

X. Copy

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Response
4 Feb 78

MEMORANDUM FOR: General Counsel

FROM : John F. Blake
Acting Deputy Director of
Central Intelligence

STATINTL

1. Please give me your legal opinion on the Agency's policy of granting three years' LWOP to Agency employees who accompany their Agency employed spouses to other geographic locations [REDACTED]

2. I would appreciate your reviewing the policy in general, but please specifically focus on the following questions:

- a. Is the policy discriminatory on the basis of marital status?
- b. Is the policy inequitable because it covers only Agency employees whose spouses are Agency employees?

3. May I have your response by 3 February, please.

7s/John F. Blake

John F. Blake

SA/DDCI:skm (4Jan78)

Distribution:

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(Reference: ER 77-10963)

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Director of Personnel
5 E 58 HQ

EXTENSION

NO.

DATE

14 FEB 1978

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Secretary, Executive
Advisory Group
7E12 HQ

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

Jim:

Request that an EAG meeting
be scheduled on the subject of
the Agency's three-year leave
without pay policy.

Pertinent papers are
attached.

/s/ F.W.M. Janney

F. W. M. Janney

30 March 1978

EAG AGENDA

| <u>DATE</u> | <u>SUBJECT</u> | <u>OFFICER</u> |
|------------------|---|----------------|
| *Tuesday 4/11/78 | Leave-Without-Pay Policy Annuitant Compensation | Mr. Janney |
| *Tuesday 4/18/78 | Task Force Report on Industrial Contracts and Industrial Security | Mr. Blake |
| *Tuesday 4/25/78 | Future ADP Review Procedure | Mr. Taylor |

Meetings held at 4:30 in the DCI Conference Room unless otherwise noted.

*Indicates new item or change of date since previous agenda.

cc: Mr. Janney, Mr. May

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| TO | NAME AND ADDRESS | DATE | INITIALS |
| 1 | EO/DDA | 4/5 | [Signature] |
| 2 | | | |
| 3 | ADDA | 6 APR 1978 | [Signature] |
| 4 | | | |
| 5 | DDA | 6 APR 1978 | [Signature] |
| 6 | | | |
| ACTION | | DIRECT REPLY | PREPARE REPLY |
| APPROVAL | | DISPATCH | RECOMMENDATION |
| COMMENT | | FILE | RETURN |
| CONCURRENCE | | INFORMATION | SIGNATURE |
| Remarks: | | | |
| EAG Agenda | | | |
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| Executive Officer/DDA | | | |
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